

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDWARD LEWIS,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

No. 2:21-cv-02367-TLN-JDP

**ORDER**

This matter is before the Court on Defendant Ford Motor Company’s (“Defendant” or “FMC”) Motion to Dismiss. (ECF No. 8.) Plaintiff Edward Lewis (“Plaintiff”) filed an opposition. (ECF No. 10.) Defendant filed a reply. (ECF No. 12.) For the reasons set forth below, the Court DENIES Defendant’s motion.

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1                   **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2                   On or about February 18, 2018, Plaintiff entered a warranty contract with Defendant  
 3 regarding a 2018 Ford Fusion (the “vehicle”). (ECF No. 1 at 3.) Plaintiff alleges the vehicle had  
 4 defects with the “electrical system, transmission, and/or engine.” (*Id.* at 4.) Plaintiff alleges he  
 5 discovered Defendants’ wrongful conduct in February 2021, as the vehicle continued to exhibit  
 6 symptoms of defects following Defendant’s unsuccessful attempts to repair them. (*Id.* at ¶ 11.)

7                   Plaintiff filed the operative Complaint on December 20, 2021, alleging the following  
 8 claims: (1) violation of California Civil Code § 1793.2(d); (2) violation of California Civil Code §  
 9 1793.2(b); (3) violation of California Civil Code § 1793.2(a)(3); (4) breach of the implied  
 10 warranty of merchantability; (5) violation of the Magnuson-Moss Warranty Act; and (6)  
 11 fraudulent inducement — concealment. (*Id.* at 7–16.) On January 31, 2022, Defendant filed the  
 12 instant motion to dismiss, in which it seeks dismissal only of Claim Six. (ECF No. 8.)

13                   **II.      STANDARD OF LAW**

14                   A motion to dismiss for failure to state a claim upon which relief can be granted under  
 15 Federal Rule of Civil Procedure (“Rule”) 12(b)(6) tests the legal sufficiency of a complaint.  
 16 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain  
 17 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.  
 18 Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). Under notice pleading in  
 19 federal court, the complaint must “give the defendant fair notice of what the . . . claim is and the  
 20 grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal  
 21 citation and quotations omitted). “This simplified notice pleading standard relies on liberal  
 22 discovery rules and summary judgment motions to define disputed facts and issues and to dispose  
 23 of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

24                   On a motion to dismiss, the factual allegations of the complaint must be accepted as true.  
 25 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court must give the plaintiff the benefit of every  
 26 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail  
 27 Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege  
 28 “specific facts” beyond those necessary to state his claim and the grounds showing entitlement to

1 relief.” *Twombly*, 550 U.S. at 570 (internal citation omitted).

2 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of  
3 factual allegations.” *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).  
4 While Rule 8(a) does not require detailed factual allegations, “it demands more than an  
5 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A  
6 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the  
7 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678  
8 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
9 statements, do not suffice.”). Thus, “[c]onclusory allegations of law and unwarranted inferences  
10 are insufficient to defeat a motion to dismiss” for failure to state a claim. *Adams v. Johnson*, 355  
11 F.3d 1179, 1183 (9th Cir. 2004) (citations omitted). Moreover, it is inappropriate to assume the  
12 plaintiff “can prove facts that it has not alleged or that the defendants have violated the . . . laws  
13 in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State  
14 Council of Carpenters*, 459 U.S. 519, 526 (1983).

15 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough  
16 facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim  
17 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
18 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at  
19 680. While the plausibility requirement is not akin to a probability requirement, it demands more  
20 than “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility  
21 inquiry is “a context-specific task that requires the reviewing court to draw on its judicial  
22 experience and common sense.” *Id.* at 679. Thus, only where a plaintiff fails to “nudge [his or  
23 her] claims . . . across the line from conceivable to plausible[,]” is the complaint properly  
24 dismissed. *Id.* at 680 (internal quotations omitted).

25 If a complaint fails to state a plausible claim, “[a] district court should grant leave to  
26 amend even if no request to amend the pleading was made, unless it determines that the pleading  
27 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,  
28 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995));

1 *see also Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in  
2 denying leave to amend when amendment would be futile).

3 **III. ANALYSIS**

4 Defendant argues the Court should dismiss Claim Six (fraudulent inducement —  
5 concealment) for two reasons: (1) the Complaint does not plead fraud with particularity as  
6 required by Rule 9(b); and (2) the economic loss rule bars the claim. (ECF No. 8-1 at 6.)  
7 Defendant also seeks to dismiss Plaintiff's request for punitive damages as those damages are  
8 only recoverable pursuant to a viable fraud claim. (*Id.*) The Court will address Defendant's  
9 arguments in turn.

10 A. Rule 9(b)

11 A claim grounded in fraud “must state with particularity the circumstances constituting  
12 fraud . . .” Fed. R. Civ. P. 9(b). A court may dismiss a claim for failing to satisfy Rule 9(b)’s  
13 heightened pleading requirements. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th  
14 Cir. 2003). Under this heightened pleading standard, a party must “identify the who, what, when,  
15 where, and how of the misconduct charged, as well as what is false or misleading about the  
16 purportedly fraudulent statement, and why it is false.” *Moore v. Mars Petcare US, Inc.*, 966 F.3d  
17 1007, 1019 (9th Cir. 2020) (quoting *Davidson v. Kimberly-Clark*, 889 F.3d 956, 964 (9th Cir.  
18 2018)). The complaint must contain enough detail to put a defendant on notice of the alleged  
19 misconduct so they may “defend against the charge and not just deny that they have done  
20 anything wrong.” *Vess*, 317 F.3d at 1106. “[C]laims based on an omission can succeed without  
21 the same level of specificity required by a normal fraud claim.” *Miller v. Ford Motor Co.*, No.  
22 2:20-CV-01796-TLN-CKD, 2022 WL 3229503, at \*13 (E.D. Cal. Aug. 10, 2022) (citation and  
23 internal quotation marks omitted).

24 In Claim Six, Plaintiff alleges Defendant committed fraud by selling Plaintiff the vehicle  
25 without disclosing that the “transmission was defective and susceptible to sudden and premature  
26 failure.” (ECF No. 1 at ¶ 69.) Plaintiff alleges Defendant “was well aware and knew that the  
27 transmission . . . was defective but failed to disclose this fact to Plaintiffs at the time of sale and  
28 thereafter.” (*Id.* at ¶ 70.) Plaintiff alleges Defendant “knew (or should have known) that the

1 transmission had one or more defects that can result in various problems, including . . . hesitation  
2 upon acceleration, harsh shifting, delay upon shifting, slamming into gear, and transmission  
3 failure[, which] . . . present a safety hazard and are unreasonably dangerous to consumers because  
4 they can suddenly and unexpectedly affect the driver's ability to control the vehicle's speed,  
5 acceleration, deceleration and/or overall responsiveness of the vehicle in various driving  
6 conditions." (*Id.* at ¶ 71.) Plaintiff alleges Defendant knew of the transmission defect based on  
7 "pre-production and post-production testing data, early consumer complaints about the  
8 transmission defect made directly to FMC and its network of dealers, aggregate warranty data  
9 compiled from FMC's network of dealers, testing conducted by FMC in response to these  
10 complaints, as well as warranty repair and part replacements data received by FMC from FMC's  
11 network of dealers, amongst other sources of internal information." (*Id.* at ¶ 79.) Plaintiff alleges  
12 he would not have purchased the vehicle had he known the true facts about the transmission  
13 defect. (*Id.* at ¶ 80.) Lastly, Plaintiff alleges he suffered actual damages and was unknowingly  
14 exposed to the risk of liability, accident, or injury to third parties because of Defendant's  
15 fraudulent conduct. (*Id.*)

16 Defendant argues these allegations are insufficient because Plaintiff "merely describes  
17 alleged performance problems with the vehicle and does not amount to identifying the defect that  
18 FMC failed allegedly to disclose." (ECF No. 8-1 at 9.) Additionally, Defendant argues that  
19 Plaintiff failed "to plead that FMC was under a duty to disclose any alleged and unspecified  
20 defect to the general public." (*Id.* at 10.) In opposition, Plaintiff argues Claim Six is well-plead  
21 because the transmission defect is a material fact, Defendant is under a duty to disclose material  
22 facts, and the claim contains sufficient particularity under Rule 9(b). (ECF No. 10 at 7–16.)

23 The Court concludes that Plaintiff satisfies Rule 9(b)'s heightened standard, especially  
24 "given the inherent limitations of an omission claim." *Miller*, 2022 WL 3229503, at \*13.  
25 Plaintiff alleges the "who" (Ford Motor Company), "what" (concealing material facts regarding  
26 the vehicle's defective transmission), "when" (at the time of sale and thereafter), "where" (at  
27 FMC's authorized dealership and repair facilities), and "how" (knowing of the defect based on  
28 production testing data, early consumer complaints made directly to FMC and its network of

1 dealers, aggregate warranty data compiled from FMC’s network of dealers, testing conducted by  
2 FMC, as well as warranty repair and part replacements data received by FMC from FMC’s  
3 network of dealers and breaching its duty to disclose by concealing a defect that posed an  
4 unreasonable safety risk). (ECF No. 1 at 13–14.) Each allegation sufficiently supports Plaintiff’s  
5 claim of fraud by omission in accordance with Rule 9(b)’s heightened pleading standard by  
6 stating the claim with enough particularity to allow Defendant to defend against the claim. *See*  
7 *Scherer v. FCA US, LLC*, 565 F. Supp. 3d 1184, 1190 (S.D. Cal. 2021) (concluding that although  
8 the plaintiff did not detail the “granular defect” within the transmission, plaintiff’s allegations  
9 identifying the transmission as the defect and describing the performance problems provided  
10 enough particularity at the pleading stage, especially considering that the defendant has internal  
11 knowledge about its products).

12 As to Defendant’s argument that Plaintiff failed to properly allege FMC was under a duty  
13 to disclose the defective transmission, the Court disagrees. In the instant case, Plaintiff alleges  
14 Defendant failed to disclose a known safety risk and had exclusive knowledge of the safety risk,  
15 which is a material fact requiring disclosure. (ECF No. 1 at 13–15.) Under California law, a  
16 manufacturer has the duty to disclose any unreasonable safety hazard. *Wilson v. Hewlett-Packard*  
17 *Co.*, 668 F.3d 1136, 1141 (9th Cir. 2012) (collecting cases); *see also Hastings v. Ford Motor*  
18 *Company*, No. 19-cv-02217-BAS-MDD, 2020 WL 12688367, at \*3 (S.D. Cal. Oct. 2, 2020)  
19 (“Under California law, manufacturers hold a duty to disclose an unreasonable safety risk in a  
20 product.”) (internal citations omitted). A safety hazard becomes unreasonable when “the defect  
21 manifests without adequate warning to prevent a vehicle occupant from being placed in danger.”  
22 *Miller*, 2022 WL 3229503, at \*15. However, the plaintiff need not suffer actual injury from the  
23 defect. *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1028 (9th Cir. 2017). A plaintiff, as  
24 does Plaintiff in this case, need only allege a “sufficiently close nexus” between the defect and the  
25 safety issue. *Id.* Plaintiff properly alleged both that the transmission defect presented a safety  
26 risk (loss of control of the vehicle), and the safety risk was unreasonably dangerous to consumers.  
27 (ECF No. 1 at 13.) Accordingly, the Court finds Plaintiff pleaded sufficient facts that Defendant  
28 had a duty to disclose.

1                   B.        Economic Loss Rule

2                   Lastly, Defendant argues Claim Six is barred by the economic loss rule. (ECF No. 8-1 at  
3 13.) In opposition, Plaintiff argues the economic loss rule does not apply to its fraudulent  
4 inducement claim. (ECF No. 10 at 16–23.)

5                   The economic loss rule states that a party to a contract cannot recover “purely economic  
6 loss” in tort, “unless he can demonstrate harm above and beyond a broken contractual promise.”  
7 *Rattagan v. Uber Techs., Inc.*, 19 F.4th 1188, 1191 (9th Cir. 2021) (internal citations and  
8 quotations omitted). The California Supreme Court set forth an exception to the economic loss  
9 rule when “the duty that gives rise to tort liability is either completely independent of the contract  
10 or arises from conduct which is both intentional and intended to harm.” *Robinson Helicopter Co.*  
11 *v. Dana Corp.*, 34 Cal. 4th 979, 990 (2004) (quoting *see Erlich v. Menezes*, 21 Cal. 4th 543, 552  
12 (1999)). Several courts have found that fraudulent inducement is an exception to the economic  
13 loss rule. *Id.* at 989–90 (“Tort damages have been permitted in contract cases . . . where the  
14 contract was fraudulently induced.”) (citing *Erlich*, 21 Cal. 4th at 551–52); *Dhital v. Nissan North*  
15 *Am., Inc.*, 84 Cal. App. 5th 828, 843 (2022) (“[W]e conclude that, under California law, the  
16 economic loss rule does not bar plaintiffs’ claim here for fraudulent inducement by  
17 concealment”); *Kroutilin v. FCA US, LLC*, No. 822CV00929FWSDFM, 2022 WL 18278602, at  
18 \*5 (C.D. Cal. Dec. 7, 2022) (“[B]ased on the existing persuasive authority, the court finds that  
19 Plaintiff’s sixth cause of action for fraudulent inducement — concealment is not barred by the  
20 economic loss rule.”) (citing *Dhital*, 84 Cal. App. 5th 828); *Flier v. FCA US LLC*, No. 21-CV-  
21 02553-CRB, 2022 WL 16823042, at \*6–7 (N.D. Cal. Nov. 8, 2022) (same); *Scherer v. FCA US,*  
22 *LLC*, 565 F. Supp. 3d 1184, 1193 (S.D. Cal. 2021) (same). The Court agrees with these well-  
23 reasoned decisions and concludes the economic loss rule does not bar Plaintiff’s claim.

24                   Accordingly, the Court DENIES Defendant’s motion to dismiss Claim Six and DENIES  
25 Defendant’s derivative request to strike Plaintiff’s prayer for punitive damages.

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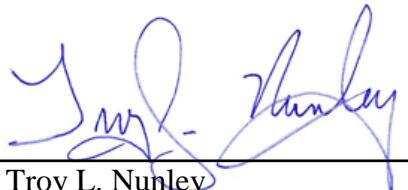
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1           **IV. CONCLUSION**

2           For the foregoing reasons, the Court DENIES Defendant's Motion to Dismiss. (ECF No.  
3 8.) Defendant shall file an answer not later than twenty-one (21) days from the electronic filing  
4 date of this Order.

5           IT IS SO ORDERED.

6           **DATE: February 7, 2023**

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9           Troy L. Nunley  
10           United States District Judge

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